



Fiscal Year 2005-2007 Joint OPP/OECA State/Tribal Pesticide Cooperative Agreement Guidance

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SECTION 1: INTRODUCTION

1.1 Purpose of this Guidance

The purpose of this guidance is to: (1) identify levels of attainment for pesticide programs and approaches to enforcement activities; (2) identify activities eligible for state/tribal cooperative agreement funds in fiscal years 2005 - 2007, (3) describe requirements and expectations of applicants; and (4) provide anticipated funding information. This guidance, developed by EPA's Office of Pesticide Programs (OPP) and Office of Enforcement and Compliance Assurance (OECA), is specifically directed to the EPA Regional Offices that negotiate cooperative agreements to conduct pesticide program development, implementation activities, and compliance/enforcement activities.

OPP and OECA are issuing this guidance for fiscal years 2005 - 2007.

Section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, authorizes EPA to enter into cooperative agreements with states, territories, and Indian tribes (hereafter referred to collectively as "applicants") to conduct pesticide enforcement programs and Section 23(a)(2) provides for certification and training programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for FY 1999, pesticide program implementation grants under section 23(a)(1) of FIFRA are available for "pesticide program development and implementation, including enforcement and compliance activities.

This joint guidance is intended to help coordinate development/coordination activities and compliance/enforcement under the pesticide program. Thus, the two sets of activities are interconnected, but may be handled under two, independent agreements.

1.2 Organization of this Guidance

This Guidance contains information on applying for both the pesticide program and enforcement cooperative agreements. Section 2 describes the application process for pesticide program state/tribal cooperative agreements for Fiscal Years 2005 - 2007 and is similar to that for Fiscal Years 2002/2003. Section 2 includes information on activities that may be funded for pesticide program activities. Section 3 explains the pesticide enforcement activities that may be funded during the FY 2005 - 2007 cooperative agreement cycle. Section 4 provides reporting and evaluation guidance. Section 5 provides general cooperative agreement authorization and administrative requirements. Section 6 discusses review procedures, and section 7 contains information regarding allotment of pesticide program and enforcement cooperative agreement funds.

This guidance document also contains several appendices. Appendix 1 provides a checklist to be used by both the applicants and the regions when reviewing the application for specific information. Appendix 2 outlines EPA Application Review Procedures. Appendix 3a is

the Guidelines for Using EPA Form 5700-33H. This form is to be used, in conjunction with the grant work plan and mid and end-of-year evaluation reports, to provide both grant output projections and accomplishments for state and tribal enforcement and C&T programs. The information reported on EPA Form 5700-33H is to be provided to the Regional Offices quarterly [enforcement program] and end-of-year [pesticide program]. Appendix 3b provides guidance for defining what constitutes a WPS inspection for purposes of reporting accomplishments, and it includes a WPS specific reporting form. Guidance on setting Enforcement Priorities is set out in Appendix 4. Appendix 5 is the Worker Safety Report Form. Appendix 6 is Risk Based Targeting Guidance for WPS Inspections.

We recommend that applicants also refer to the National FIFRA Enforcement Response Policy and the FIFRA Worker Protection Standard Penalty Policy, available at <http://es.epa.gov/oeca/ore/tped/toxpest.html>, while drafting their proposals.

SECTION 2: FY 2005 - 2007 APPROACH TO PESTICIDE PROGRAM STATE/TRIBAL COOPERATIVE AGREEMENTS

2.1 General Method

The Pesticide Programs' approach being taken in FY 2005 - 2007 is intended to provide significant flexibility, accomplish certain goals for the specific program areas, ensure accountability for funds, and advance broad goals for pesticide management programs. In general, OPP describes in this guidance a broad goal for pesticide management programs conducted by the applicants. We also define specific *levels of attainment* for each specific program area (ground water and water quality, endangered species, worker protection, and certification programs). The state/tribe will need to commit to reach the specific *levels of attainment* for each specific program area and then may negotiate with the Regional Office to define other activities it will accomplish which will advance the *Pesticide Management Goal*. If a state/tribe has already reached the level of attainment for a specific program area, they may, but do not need to advance that specific program area. Instead, they may maintain the program at that level and negotiate additional program activities that will advance the *Pesticide Management Goal*.

OPP acknowledges that certain activities and functions of a Pesticide Management Program are not predictable. For example, throughout a given time period, a situation may arise whereby the recipient must act to address a crisis or the Program Office may be required to obtain certain information or institute certain activities in the field. To the extent possible, OPP encourages the Regions and Cooperative Agreement recipients to provide latitude within the agreements to account for such unforeseen circumstances.

Under this approach, applicants will be expected to ensure that they reach and maintain the levels of attainment for each specific program area. Additionally, the negotiated activities and projects conducted with cooperative agreement funds will need to be well defined and will

need to include specific commitments and success measures. These success measures will indicate how the activity advances the *Pesticide Management Goal*. OPP is distinguishing these success measures from "environmental indicators" or "environmental measures." Success measures for FY 2005 - 2007 may be quantitative in nature and, in fact, OPP will continue to request certain quantitative information in FY 2005 - 2007 and beyond. OPP supports use of cooperative agreement funds to assist us in developing and implementing meaningful sub-objectives and measures. See also Section 2.2.4 of this guidance regarding measures.

2.2 Program Goals and Activities

2.2.1 The Pesticide Management Goal

State/tribal cooperative agreements are intended to accomplish specific levels of attainment within four specific program areas but also, to recognize and/or establish an applicant's pesticide management program capable of advancing an overall environmental goal. The following *Pesticide Management Goal* allows the flexibility necessary for the state/tribe to carry out activities such as education, alternative management strategy initiatives including IPM programs, collection and disposal initiatives and others, or it permits increased activity in one or more of the four specific program areas if that is the applicant's priority.

THE PESTICIDE MANAGEMENT GOAL

It is the goal of EPA's National Pesticide Program, in partnership with the state, territory and tribal lead agency for pesticide management activities, to ensure protection of human health and the environment from risks resulting from pesticide production, registration, distribution, use and disposal, while recognizing the benefits that pesticides offer to society. Further, pesticide management programs should seek to prevent pollution; reduce risk from pesticides; protect human health, the land, air and water, and both plant and animal non-target species; and show positive human health or environmental results on the national, state, tribal, territorial or community level.

2.2.2 Levels of Program Attainment

For FY 2005 - 2007 state/tribal cooperative agreements, all applicants with continuing cooperative agreements must commit to reach the following levels of attainment for each of the four specific program areas. Applicants who do not commit to reach these levels of attainment by the end of each fiscal year may be funded in the specific program areas only and may not be provided funding for "Additional Program Activities." Applicants must negotiate specific commitments in specific program areas with the regional office. It is recognized that circumstances may occur which require an state/tribe to modify their commitments once the state/tribal cooperative agreement is in place. If this occurs, the state/tribe must work with the Regional Office to reach agreement on new commitments. If these changes result in failure to

reach the level of attainment, the Regional Office must consider this when determining whether to approve “Additional Program Activity” funding for future state/tribal cooperative agreements. OPPTS recognizes that circumstances may occur for Tribes that would require Regions to negotiate separate levels of attainment on a case by case basis. EPA Regions will consider any applicant’s consistent failure to demonstrate progress toward reaching the agreed upon levels of attainment in funding decisions for the FY 2005 - 2007 cycle.

Following is the level of attainment for each of the four specific program areas for FY 2005 - 2007 state/tribal cooperative agreements:

Pesticide Worker Safety

One of the Agency’s primary goals under its Strategic Plan is to assure safe workplaces and communities by reducing harmful exposure to pesticides. Having a solid and comprehensive pesticide worker safety program is essential to accomplishing the strategic goals that have been set for EPA’s Office of Pesticide Programs (OPP). Therefore, continuing a strong focus on implementing the pesticide worker safety programs (worker protection, certification and training (C&T), and the outreach to health care providers initiative) will remain a high priority for OPP in FY 2005-07

OPP wants to emphasize its desire for states/tribes to advance the “pesticide worker safety” program. States/tribes should work to establish stronger linkages between the worker protection program, the C&T program, and the outreach to health care provider initiative. These programs all contribute to better protection for pesticide workers, and when these program efforts are linked, EPA feels they provide for a more comprehensive and more effective pesticide worker safety program. Having a worker safety program that integrates outreach and safety training, exposure prevention, exposure mitigation, and better response and treatment by health care providers will lead to improve worker health and safety.

As one of OPP’s stated priorities for the FY2005-07 cooperative agreement cycle, State and tribal partners working with EPA under cooperative agreements should direct appropriate resources toward carrying out activities in the pesticide worker safety program area. At a minimum, states/tribes must commit to accomplishing the “core activities” outlined below, and they must report the information requested under the program reporting requirements section of the worker safety guidance. In addition to carrying out the core activities outlined below, states/tribes are encouraged to undertake some level of work on the “supplemental activities” listed for pesticide worker safety. Although the supplemental activities are optional and are not considered essential to the baseline operation of the worker safety programs, EPA feels these activities will enhance program implementation and lead to more effective programs.

[NOTE: States/tribes are only required to commit to carrying out the core activities and the program reporting requirements. Negotiation of additional commitments beyond the core activities is optional. States/tribes with high populations of workers or specific pesticide worker safety concerns should consider a higher level of activity in this program area.]

Core Activities for Worker Protection

1. **Outreach.** States/tribes should continue to provide information on the revised Worker Protection Standard (WPS) to all affected parties in the regulated/protected community. Emphasis should be placed on: 1) informing pesticide workers and handlers how to make tips/complaints and report pesticide incidents/illnesses; 2) informing pesticide workers and handlers about the protections provided by the WPS regulation (states/tribes should focus their outreach on situations that pose the highest risk to workers and handlers); 3) conducting outreach to address the priorities states/tribes identified through their targeting efforts (refer to item below on “Targeting to Identify High Risk Situations for Agricultural Workers/Handlers”); and 4) conducting outreach to agricultural areas/sectors with a history of non-compliance or enforcement problems (states/tribes should use compliance data from their field inspections to identify such areas).
2. **Targeting to Identify High Risk Situations for Agricultural Workers/Handlers.** All states/tribes were to have developed a WPS targeting strategy as part of their original WPS State Implementation Plans and compliance monitoring strategies. States/tribes should routinely update their targeting strategy to ensure their worker protection outreach and compliance monitoring activities are focused on establishments and/or situations that pose the highest risk to pesticide workers and handlers. However, information obtained through the national assessment and regional oversight activities revealed many states/tribes didn’t appear to have a current risk-based targeting strategy for worker protection or they weren’t following it. In light of this, and the limited resources for pesticide programs, states/tribes should revisit their WPS targeting strategies and assure their WPS activities are focused on the establishments and/or situations that pose the highest risk to pesticide workers and handlers. ***[NOTE: Please see OECA guidance on WPS targeting. For OPP states/tribes must report the top three priorities they have established for worker protection outreach and compliance monitoring activities. EPA needs this information to better assess national WPS priorities so we can target the development of national outreach and training materials to areas of the highest need. Please see the program reporting requirements.]***
3. **Coordination Regarding Pesticide Incidents.** Migrant clinics and public health offices often serve as a main entry point for pesticide workers who are seeking treatment for pesticide-related illnesses or injuries and wish to report an alleged pesticide incident involving occupational pesticide exposure. As such, states/tribes need to do basic outreach to these entities and work with them so that persons seeking services at these places are more likely to be given information about proper procedures for making pesticide tips/complaints and state/tribal jurisdictions regarding pesticide programs. ***[NOTE: States/tribes can refer to the Migrant Clinician Network (MCN) website for a directory/listing of migrant clinics. <<http://www.migrantclinician.org>>]***
4. **Information Regarding Pesticide Incidents.** States/tribes need to establish a basic

working relationship and contact point with their central public health agency (or the appropriate entity having jurisdiction over pesticide incident reporting) to obtain basic information on the annual number of occupational pesticide exposures/illnesses that have been reported to that agency. Regions should work with their states/tribes in this area to help establish good working relationships between agencies and to facilitate and assist with information collection. States/tribes should be cognizant of this information so they are informed about the extent of occupational pesticide exposures and/or illnesses being reported so they can identify potential issues or trends that may warrant additional outreach and/or compliance monitoring efforts, and so they can coordinate incident response as appropriate. EPA is not asking for any other follow-up regarding this information other than to obtain the numbers and provide them to EPA. [**NOTE: Please see the program reporting requirements section.**]

5. **Supporting WPS Training.** States/tribes should work with employers and other training providers to assure adequate worker and handler training options exist and adequate quantities of training materials are available to meet the needs of the regulated community. States/tribes should maintain relationships with Cooperative Extension Service (CES), advocacy groups, and other parties/organizations involved in providing WPS training in order to assist with delivery of such programs and assure that the content of these training or outreach programs are appropriate.

Core Activities for C&T

1. **Program Maintenance and Support.** To ensure the competency of certified applicators and provide for public safety and national security, states/tribes must assure pesticide applicator certification programs are kept current and are updated/revised as needed to address current competency standards, national security concerns and emerging regulatory issues/requirements. States/tribes should assure applicator exams are updated as needed to reflect required competency and certification standards, and they should coordinate with training providers to assure applicator training materials and programs are consistent with the certification exams.
2. **State Plan Requirements/C&T State Plan and Reporting Database Implementation.** States/tribes must assure their State/Tribal Plans for C&T are maintained and kept current in accordance with the requirements in 40 C.F.R. Part 171. EPA has developed a web-based database system that will facilitate development and maintenance of their state and tribal Plans for C&T through an electronic template. This template will generate the State Plans in a uniform format with the required elements, and will ease the annual updating and submission of C&T Plans required under Part 171. The database system also includes a function for electronic submission of the annual C&T reporting information required under Part 171. In FY 2005, states and tribes will be required to complete entry of their State Plan information into the C&T State Plan and Reporting database and submit it to the EPA for approval. States/tribes must also to use the database system for submitting their annual C&T accomplishment data and reporting

information. States/tribes should work with their EPA Regional Office to get any technical assistance needed to assure they can access and use the database system.

3. **Training Monitoring/Quality Assurance.** States/tribes must monitor, and/or participate in initial certification and recertification training programs to help assure the quality and consistency of training programs. States/tribes need to work collaboratively with CES and other training providers to try and improve training programs and raise applicator knowledge and competency.
4. **Addressing Compliance/Enforcement Issues Through C&T Program.** States/tribes should routinely review their compliance monitoring and enforcement data to determine if there are any consistent compliance problems associated with certain use patterns or the use of specific pesticides. Any such trends or problems that are identified should be addressed in applicator training programs as appropriate and noted in the annual C&T reporting information. [*NOTE: Please see the program reporting requirements section.*]

Supplemental Activities for Pesticide Worker Safety Programs

1. **National Program Assessment and Follow-up Activities.** States/tribes should review the final report on the national assessment of EPA's worker protection program when it is released and be familiar with the outcomes of the assessment and the activities the Agency plans on undertaking in response to the assessment. EPA will be carrying out a variety of follow-up activities stemming from the assessment process (including hazard communication pilot projects), and states/tribes should be active partners in the follow-up activities since these efforts will affect the future direction of the programs.
2. **Certification and Training Assessment Group (CTAG).** The CTAG effort has resulted in numerous recommendations for program improvement. EPA is actively working on several projects stemming from the CTAG recommendations, including the C&T State Plan and Reporting database, the National Core Exam & Manual and other activities that will result in substantial improvements to the C&T program. States/tribes should continue active participation in the CTAG process and regularly visit the CTAG web site (<http://pep.wsu.edu/ctag/>) to keep abreast of the ongoing CTAG activities and identify potential opportunities for collaboration with EPA and the CTAG.
3. **Supporting the National Strategy for Outreach to Health Care Providers.** The National Strategy for Outreach to Health Care Providers is an important component of EPA's pesticide worker safety program. It is the cornerstone of EPA's effort to improve recognition and management of pesticide poisonings by health care providers, and it is an important part of efforts to facilitate better communications regarding pesticide incidents. States/tribes should consider undertaking activities listed below to support the initiative:
 - Identify and work with health care providers, migrant clinicians, and related contacts to build productive communication networks that will support the

objectives of the initiative and facilitate information exchange on pesticide incidents and exposures.

- Distribute EPA's revised *Recognition and Management of Pesticide Poisonings* manual to health care provider contacts, migrant clinics and other appropriate entities to help improve diagnosis and treatment of pesticide related illnesses.
- Participate on workgroups, pilot projects, or other activities arising from the National Forum for the National Strategy for Outreach to Health Care Providers.

4. **Other Activities to Enhance Pesticide Worker Safety Programs.** States/tribes are encouraged to undertake the following activities in order to enhance the effectiveness of their pesticide worker safety program:

- Work with community-based training providers, such as AFOP/Americorp and other groups, to assure they are appropriately linked with the agricultural community so their services can be utilized more effectively.
- Establish and/or coordinate a Train-the-Trainer program using the materials and program developed through the National Train-the-Trainer pilot program once they are finalized and made available.
- Work with farm worker advocacy and grower groups to address any worker protection issues that may have been identified by these groups.
- Conduct assessments of program to identify any compliance trends in worker protection that may be significant and/or noteworthy to EPA, or that may warrant response by the Agency (this could involve noting problems with specific products, identifying problem label language, identifying problems with specific agricultural sectors, or identifying problems with specific WPS provisions, etc.).
- Review pesticide applicator certification procedures to identify security issues or weaknesses in the program, and take steps to assure only competent pesticide applicators with a legitimate need for certification are being certified through the C&T program.
- Consider the CTAG issue papers related to C&T exam administration, positive identification, and minimum age requirements for certification (SFIREG has endorsed these issue papers as being effective proposals for improving C&T programs), and determine if adjustments may be needed to operation of your state or tribal program based on the information in these issue papers.
- Use exam development and validation principles to revise applicator exams where

resources permit. This effort is more applicable to states/tribes that have participated in the National Exam Development Seminar.

Pesticide Worker Safety - Program Reporting Requirements

For FY 2005 - 07, each state/tribe must report on the items outlined below. This information is needed for EPA's accountability needs and our efforts to respond to public concerns about program implementation. This information is also essential to characterize annual program accomplishments and to collect baseline data that will lead to improved measures for the program. ***[NOTE: EPA has developed a model reporting format for the pesticide worker safety reporting requirements. This reporting format is designed to facilitate uniform reporting and easier compilation of the reported information. In addition to reporting the information that is requested below, some EPA Regions may require states/tribes to submit narrative accomplishment reports or additional information that more fully characterizes program activities and accomplishments. Please work closely with your EPA Regional Office to determine the reporting requirements applicable in your Region.]***

1. Report on tips/complaints investigated by the state/tribe involving occupational pesticide exposure or illness. States/tribes should report: 1) the total number of complaints investigated by the state/tribe that involved alleged occupational pesticide exposure or illness; 2) the number of these complaints that were associated with agricultural versus non-agricultural occupations; 3) the number of these complaints that were associated with misuse or label violations versus the number that appeared to have resulted from use according to the label (this determination would be based on whether there was an enforcement action and the nature of such action); 4) the number of these complaints associated with a WPS violation versus other violation; and 5) for those complaints associated with misuse or label violations, the nature of the violation (i.e., PPE, REI, drift, posting, WPS versus non-WPS, etc.). ***[NOTE: EPA acknowledges that some states/tribes may not currently have tracking systems that enable them to readily track and report all of the requested information. EPA is not expecting states/tribes to develop new tracking and/or reporting systems in connection with this reporting requirement. OPP will leave it up to Regions to determine state/tribal capacity in this area and negotiate reporting requirements accordingly. Regions and states/tribes are urged to work together to provide the requested information or come as close as possible where constraints exist. Where states/tribes lack the capacity to track all the requested information Regions should work with them to improve their tracking capabilities. Regions should also provide assistance with obtaining the requested information if possible.]***
2. Report the number of pesticide incidents that were reported to the state/tribal public health agency (or the appropriate entity having jurisdiction over pesticide incident reporting) that involved occupational pesticide exposure or illness. EPA is seeking the total number reported annually and is not asking for any other follow-up regarding this

information other than to obtain the numbers and report them to EPA. Regions should work with their states/tribes to help facilitate obtaining this information.

3. Report the top three priorities states/tribes have established for worker protection outreach and compliance monitoring activities (through their targeting efforts done in connection with OECA's guidance or through their own targeting strategy effort or priority setting process).
4. Report on any new WPS-related outreach or compliance assistance materials and any new WPS worker or handler training materials developed in FY 2005-07 that have been particularly useful or well-received. If applicable, report by submitting sample copies to EPA through the Regional WPS contact.
5. Report on the number of sub-agreements the state/tribe currently has with WPS training providers that issue WPS training verification cards, and report the total number of worker/handler training verification cards issued to training providers.
6. Report on any new and noteworthy pesticide applicator training materials developed in FY 2005-07 (including web-based training programs). (Please list and briefly describe the materials/programs.) **[NOTE: states/tribes should also put this information on the national C&T resources website. <<http://pep.wsu.edu/psp/scripts/menu.asp>>.]**
7. In addition to the FY 2005-07 pesticide worker safety reporting requirements outlined above, states/tribes must also submit their annual C&T reporting information as required under 40 C.F.R. Part 171 (Section 171.7(d)). The C&T reporting information required under 40 C.F.R. Part 171 includes:
 - The total number of private and commercial applicators initially certified, by category, during the reporting period;
 - The total number of private and commercial applicators recertified, by category, during the reporting period;
 - The total number of private and commercial applicators holding certifications, by category, at the end of the reporting period;
 - The number of initial certification and recertification training programs that were monitored and/or participated in by the state/tribe during the reporting period to assure the quality and consistency of applicator training programs;
 - Any changes in private or commercial categories/subcategories during the reporting period;
 - A summary of any instances where the C&T program was used to address pesticide use problems identified through analysis of compliance data or enforcement trends, or through another mechanism enforcement activities related to use of RUPs during the reporting period;
 - A description of any significant proposed changes in standards of competency;

- A description of any proposed changes in plans and procedures for enforcement activities related to use of RUPs for the next reporting period; and
- Any proposed changes to the State Plan for C&T that would significantly affect the state/tribal C&T program.

[NOTE: In FY 2005 - 07, states/tribes must use the C&T State Plan and Reporting database system for the submission of the annual C&T reporting information noted in item #7 above. Use of the C&T State Plan and Reporting database will automatically generate an annual C&T report that contains all of the required information noted in item #7 above. Failure to provide the annual C&T report may affect future funding levels since this reporting information is used in EPA's funding formula.]

Water Quality Protection

States and tribes should use water quality funds to develop and implement a program to protect water resources from pesticide risks. States and tribes could use these funds to:

- develop or implement generic or chemical specific Pesticide Management Plans to protect groundwater;
- coordinate protection from pesticide risks with other agencies; and
- investigate and address groundwater and surface water contamination by pesticides.

States and tribes will continue to monitor compliance with and enforce non-compliance with water quality protection labeling requirements as part of their routine inspections. In targeting use inspections, applicants will take into account areas of high risk for contamination of ground and surface water from pesticides, along with how these areas overlap with locations of pesticide use.

Water Quality Protection Specific Information

States and tribes should report on activities conducted under the cooperative agreement related to water quality. States and tribes should report on the status of the generic Pesticide Management Plans to protect water, chief pesticides of concern, and any violations of maximum contaminant levels or health advisory levels during the year. Additionally, if any of the agreement involved monitoring surface or ground water, a report on the monitoring results should be submitted with the end-of-year report. The report should address:

- number of samples obtained during the year,
- geographical areas of interest or concern e.g., vulnerable areas,
- analysis of data and trends observed,
- any issues on field sampling, analytical methods, or data interpretation,
- registrant involvement, and
- changing priorities.

Ideally, any monitoring results submitted would be provided in electronic format and forwarded to EPA HQ, Environmental Field Branch, with the end of year evaluations conducted by the Regional Office.

OPP through the registration and reregistration process and in ongoing efforts with EPA/OW works to limit the impact of pesticides to water resources. As part of OPP's Strategic Plan one of our measures of success is to track a set of 31 active ingredients that have leaching potential. This indicator has been in EPA's Strategic Plan for three years and may be in place until 2010. Our intent is to verify that these pesticides are being managed through either labeling or other methods to prevent source water contamination.

Endangered Species Protection Program

By second quarter 2005, states/tribes will have submitted a plan for distribution of bulletins to the EPA Regional Office from which Region's will develop and provide to HQ's the Regional plan. All states/tribes should be actively distributing Endangered Species (ES) pamphlets or bulletins, where they are available, to pesticide users by the third quarter of 2005. Distribution schemes should include consideration of how pesticide users receive and obtain information, from whom, and when and should include as appropriate, agreement with other entities (such as extension service offices or distributors) for further distribution of this information to pesticide user. As new bulletins are developed Regions will need to monitor with HQ's individual state and tribal progress on review of draft bulletins and progress towards final bulletin production.

Through risk assessment and mitigation, OPP's goal is to limit any potential impact to threatened and endangered species. As part of OPP's Strategic Plan one of the indicator tools we use to evaluate the impact of pesticides on listed species has been to track a set of 16 species through discussions with experts in the field. This indicator has been in our EPA Strategic Plan for three years and will need to be reevaluated in 2005. The species currently being tracked are from a list of species jointly agreed upon by EPA, the Fish and Wildlife Service, and the US Department of Agriculture some years ago.

Final Regulations on Pesticide Containers and Containment Structures

EPA is scheduled to publish the final rule on Standards for Pesticide Containers and Containment in 2004. In the event the rule is published on schedule, state governments may have to take two actions in 2005 through 2007:

- Each state must review the regulations and demonstrate that the state can carry out an adequate program to ensure compliance with residue removal requirements in the rule. Unless EPA determines that a state is carrying out an adequate program, FIFRA section 19 (f)(2) provides that the state may not exercise primary enforcement responsibility

under section 26, or certify an applicator under section 11.

- If the state is already implementing state pesticide containment regulations and wishes to continue to do so rather than incorporating the federal containment standards, the state must request authorization from EPA. This request must include documentation to demonstrate that the state's program provides at least equivalent environmental protection as the federal containment regulations.

Pesticide Field Data Base.

EPA has recently made a decision to move forward with implementation of the National Pesticide Field Data Base (NPFD). EPA HQ will issue supplemental cooperative agreement guidance in the near future. Until such time, the following is a summary of cooperative work that may be accomplished.

The Regional, state, OPP and OECA workgroup charged to develop a national pesticide field data base utilizing currently collected state inspection and complaint information completed its pilot in FY 2001. Data voluntarily submitted by several states was converted and migrated into a single data set in OPP's OPPIN database. States and tribes will be encouraged to develop pesticide field data that can be used as an indicator of field program effectiveness. The data base will be accessible to the public and all partners (EPA, states and tribes) as they are provided access to the OPPIN system. Regions should work closely with their states and tribes to support the implementation and encourage state and tribal participation.

2.2.3 Additional Program Activities

If the state/tribe agrees to meet the level of attainment or has already reached the level of attainment for each of the four specific program areas above, the state/tribe also may propose additional activities that they will undertake. Each specific activity proposal should encompass the following elements:

- Description of activity
- Cost of activity
- A schedule for completion of the activity with milestones
- An explanation of how the activity advances the Pesticide Management Goal
- Measures that will be used to evaluate the success of the activity in advancing the *Pesticide Management Goal*

Further, states/tribes may work with the Regional Office to accommodate the need for unforeseen activities and requests that are an inherent part of any pesticide management program. If this situation is acknowledged through the cooperative agreement, only the label "pesticide management program maintenance" need be included rather than the specific information noted above for *Specific Activities*. Appendix 1 contains a simple example of how a state/tribe might approach applying for funds to carry out specific additional program activities.

An example of additional program activities follows.

Urban Pesticide Initiative. States/tribes should consider developing specific activity proposals as part of the Agency's Urban Pesticide Initiative, especially where enforcement and compliance activities have shown such a need.

2.2.4 Environmental Measures

OPP and its regulatory partners have worked in recent years to develop environmental measures. Field pesticide program activities directly support attainment of national pesticide program goals, objectives and measures in EPA's Strategic Plan for 2003-2008 (ref. <http://www.epa.gov/ocfopage/plan/plan.htm>), developed in compliance with the requirements of the Government Performance and Results Act (GPRA). Pesticide program field activities are principally covered by the Strategic Plan's Goal 4 "Healthy Communities and Ecosystems. OPP will continue to work with the Office of Prevention, Pesticides and Toxic Substances, with OECA, EPA Regions, states and tribes on the development of improved field measures. The FY 2001 pilot project to develop a pesticide field data base (ref. section 2.2.3 of this guidance) is an important step forward in establishing baseline information on field activities. States and tribes are encouraged to work with EPA Regions to establish appropriate measures for the specific commitments in the work plan (ref. Section 2.1 - 2.2.4 of this guidance).

SECTION 3: FY 2005 - 2007 APPROACH TO PESTICIDE OECA ENFORCEMENT PROGRAM STATE/TRIBAL COOPERATIVE AGREEMENTS

Guidance for developing cooperative agreement work plans for pesticide compliance/enforcement activities for FY2005 - 2007 is provided in this section. Regions and states/tribes should negotiate cooperative agreements that address the national priorities as appropriate for each state/tribe, as well as specific Regional and state/territorial/tribal priorities.

Updated national priorities for state and tribal pesticide compliance and enforcement cooperative agreement activities are discussed below. These should be considered when negotiating cooperative agreements. Activities to support these program areas are described within this document. Commitment by applicants to conduct the specified activities described below should be explicitly stated in their work plans.

3.1 Compliance-Enforcement Priorities

3.1.1 Compliance-Enforcement Priority: Worker Protection Compliance and Enforcement Activities

The Agency will maintain its emphasis on inspections involving high risk, high exposure situations to ensure health of the workers. The WPS Agricultural Use Inspection Guidance and OECA's Worker Protection Inspection Guidance Manual define a "WPS inspection" and contain detailed guidance on the components of inspections. Tier I WPS use inspections and for cause inspections at agricultural establishments with previous violations of the WPS regulations are national priorities for FY 2005 - 07

Two Agency documents provide guidance on determining the appropriate subjects of WPS enforcement actions: the Summary Guidance on Issuance of WPS enforcement actions, dated February 13, 1995 and the Enforcement of Personal Protective Equipment (PPE) provisions of the FIFRA WPS, dated March 30, 1995. Consistent with these documents, applicants should incorporate into cooperative agreement work plans the following compliance and enforcement activities. It is critical to recognize that **appropriate enforcement action** on WPS use violations continues to be the national WPS priority for the pesticide enforcement cooperative agreement program for FY 2005 - 07. The EPA regions should monitor progress in this area by comparing state and tribal enforcement files with applicable enforcement response policies to determine if appropriate enforcement action was taken.

1. Use Inspections: The goal of all these activities is to assure compliance with the Worker Protection Standard and thereby help ensure health protection for the farm workers who may be exposed to pesticides. EPA established a set of requirements for routine WPS use inspections and included this definition in the FY 2002/2003 Pesticide Cooperative Agreement Guidance. For FY 2005 - 07 we have revised and clarified this guidance. [See Appendix 3b - The EPA WPS Agriculture Inspection Guidance.]

The appropriate number of inspections to be conducted in any state or tribal lands should be consistent with the number of farms and farm employees covered by WPS. The appropriate number of WPS inspections is to be negotiated between grantees and their Regional Office.

- Routine Tier I WPS use inspections should be conducted so as to assure coverage of all agricultural establishments regulated under the WPS. States/Tribes should be focusing their worker protection compliance monitoring activities on establishments and situations that have the highest likelihood of pesticide worker and handler risk (i.e., focus primarily on: 1) timing inspections during periods of pesticide application to address compliance with key worker provisions like worker training, REIs, posting, decontamination sites, etc.; 2) visiting sites with labor intensive crops and/or those crops that traditionally require a lot of hand

labor like vegetables, fruit tree and orchard crops, etc.; 3) timing inspections during the growing season to coincide with high risk labor practices and worker exposure scenarios such as those activities that result in high contact with treated foliage and exposure to residues such as harvesting, thinning, staking, pruning, detasseling, etc.; and 4) timing inspections during times when high risk pesticides would be applied at a specific time of year as a matter of general crop practice, such as methyl bromide in strawberries or azinphos methyl in fruit orchards).

- Inspections should be targeted at facilities suspected of having compliance problems and those known to employ high numbers of persons covered by the WPS.
- Inspections should also be targeted at facilities that have had previous WPS violations.
- States/Tribes should issue enforcement actions for all WPS use violations, with a specific focus on high risk situations. The EPA Regions should include in their mid and end-of-year reviews, a review of WPS actions, including Section 27 referrals, to ensure that the enforcement actions are consistent with State/Tribal enforcement response policies.
- States/Tribes will track each WPS inspection as either a Tier I (performed within 30 days of expiration of any reentry interval) or Tier II (performed beyond 30 days).

2. Tips and Complaints:

- WPS tips and complaints should be included in priority setting systems.
- The priority setting system should include maintenance of a log, log-in procedures, defined criteria for ranking the tip or complaint, follow-up procedures, and tracking mechanisms.
- FIFRA section 27 referral criteria should be reviewed to ensure complaints related to documented worker exposure from ag use pesticides are tracked as section 27 referrals.
- The investigation of all tips/complaints should encompass a complete WPS inspection, first following all applicable categories and elements of the WPS Agricultural Inspection Guidance and then covering the rest of the Rule in terms of coverage.

3. WPS Inspection Targeting

- State/Tribal work plans must include a targeting plan that clearly defines the criteria for conducting neutral scheme WPS agricultural use inspections. The targeting scheme should specifically identify the establishments and situations in the State or Tribal area that represent the highest risk to pesticide workers and/or handlers, and the States/Tribes should commit to targeting those sites for their compliance monitoring activities (Tier I inspections). A national targeting

scheme has been provided in Appendix 6 to serve as a template for the development of a targeting scheme.

4. WPS Enforcement:

- States with appropriate cooperative agreements have primary authority to investigate and enforce violations of the WPS under Part 170 and to issue enforcement actions, as appropriate, for WPS violations.
- These enforcement actions should be reported in the work plan accomplishments report with a brief narrative description about each noteworthy civil or criminal penalty enforcement action resulting from a WPS inspection. EPA is interested in routinely publicizing the accomplishments of the WPS compliance and enforcement program beyond simply the numbers of inspections and enforcement actions. A narrative description of any WPS enforcement action deemed to have significant deterrent value or having a large monetary penalty would further the goal of ensuring the public that the WPS rules are being enforced.
- Note: EPA has developed a uniform format for capturing information on the most commonly violated parts of the WPS regulation it is seeking regarding enforcement actions. EPA believe this information, when compiled, will be useful in inspection targeting and in aiming compliance assistance to address those areas where compliance is most problematic.
- States should also provide information on the number of other enforcement actions resulting from WPS inspections [stop sale/use orders, warning letters, license suspensions, etc.] in each of the reporting categories.
- A review of WPS actions, should be included as part of mid- and end-of-year regional reviews to ensure enforcement actions are consistent with state enforcement response policies. EPA Regions should review no less than 10% of case files as part of their oversight responsibilities using the template provided by HQ. This format is to be used to review all civil and criminal cases involving a violation of the WPS.
- Particular attention should be given to follow-up inspections at agricultural establishments where prior enforcement action for WPS violations was taken.

5. Continued Outreach/Compliance Assistance:

- Enforcement of Part 170 of the WPS will continue to be the priority in FY 2005 - 07. States/Tribes should, however, continue with WPS outreach/compliance assistance programs, particularly targeting specific groups who may have come forward and requested and demonstrated a need for compliance assistance. However, WPS outreach should NOT be provide in lieu of enforcement, particularly where the violators were informed and had prior knowledge about the WPS regulations.
- States/Tribes should identify areas where compliance assistance information

could improve compliance and develop materials or conduct compliance assistance to aide employers within the State.

6. Reporting:

- Progress relative to WPS implementation strategies and other worker protection compliance and enforcement activities should be tracked and reported annually.
- States/Tribes must submit, as a part of their work plan accomplishments, the following reports containing information relative to worker protection: (1) Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report" (a revised WPS specific 5700-33H) for each State/Tribe to report the number of WPS inspections (TIER I and TIER II) and the number of enforcement actions resulting from WPS inspections and (2) narrative reports on significant enforcement actions.
- State/Tribe worker protection compliance monitoring activities should be documented by the Regions through: (1) mid and end-of-year evaluation reports and (2) tracking section 27 referrals related to WPS violations.
- In those States where EPA is managing the pesticide compliance program (Colorado and Wyoming), a similar report on WPS activities should be prepared by EPA Region 8. EPA Region 8 will be working with States/Tribes to improve information exchange.
- Applicants should report the tracking of Section 27 referrals related to WPS cases.
- States/Tribes should report (brief narrative) on all alleged worker and handler occupational exposure cases investigated.
- States/Tribes should annually summarize specific areas of compliance and non-compliance from all WPS inspections and report these at least annually at the End-of-Year evaluations. For FY 2005 - 2007, a special effort is being made to capture additional information on the most commonly violated portions of the WPS rule [see the revised WPS specific 5700-33H form].

7. Training:

- Applicants should use funds for worker protection enforcement, as appropriate, to send appropriate personnel to available EPA-sponsored training sessions related to the Worker Protection Rule.¹ The number and type of attendees should be negotiated with the Region. EPA urges state and tribal managers to support travel of applicants to attend EPA-sponsored worker protection training.
- If the state/tribe needs to supplement their own training with federal training, it is recommended that the development of this training be coordinated and discussed

¹ This does not apply to PREP or PIRT training, funds for which funds are set aside and provided to State and Tribal participants separately.

with the region.

- Applicants should utilize their annual summary of specific WPS non-compliance from field inspections and provide this information to Extension for their use in future outreach/training, and the state/tribe should use these data in their own compliance assistance.

8. Oversight

- As part of the oversight activities, Regions will review WPS case files annually and complete the WPS case review sheets that will be provided to OECA. Familiarity with state/tribal enforcement response policies will facilitate this effort.
- States/tribes should regularly maintain their own oversight of field inspectors through oversight inspections and/or examinations of WPS case files to ensure that inspectors are conducting WPS inspections in a consistent manner, following the EPA WPS Agricultural Inspection Guidance and in accordance with state/tribal protocols and SOPs.
- EPA Regions may accompany state/tribal inspectors on WPS inspections, either as an oversight or joint state/tribal - EPA effort to ensure thoroughness of inspections and consistency with state/tribal protocols.

3.1.2 Compliance-Enforcement Priority: Pesticides Used to Protect Human Health

The safety and effectiveness of pesticides that claim to protect public health is an increasing priority for EPA and its co-regulators in the post-9/11 world. New products as well as currently registered products that make new public health claims (such as SARS or anthrax) are frequently appearing in the marketplace. In addition, the current Antimicrobial Testing Program indicates that a significant portion of existing products are not effective.

EPA has listed “pests of significant public health importance” which can be found in the appendix to the following website: http://www.epa.gov/opppmsd1/PR_Notices/pr2000-draft.htm but states, tribes, and Regions may choose to focus on other pests of human health concern. This priority presents states, tribes, and Regions with a wide range of possible work efforts, some suggestions are provided below. **States, tribes, and Regions should participate in some aspect of this priority that is appropriate for them. Work plan commitments under this priority need to include, but do not have to be limited to, a compliance effort.**

a. Antimicrobials

Antimicrobials are used in homes, hospitals, cafeterias, restaurants, and many other institutions. While all pesticide products are required to work as claimed by the manufacturer, EPA is particularly concerned about the effectiveness of antimicrobial pesticides because their

effectiveness is usually not obvious and studies by GAO suggest that at least 20% of pesticides are ineffective.

EPA's on-going antimicrobial testing program will continue to be a priority for OPP and OECA. Over the past several years, EPA has implemented a comprehensive strategy to ensure the efficacy of antimicrobial pesticides, placing highest priority on those that have significant public health uses. A large part of EPA's efforts involve testing hospital disinfectants and tuberculocides. Product samples collected by states and Regions are being evaluated for selected product performance claims to ensure that they perform as intended. These samples are analyzed at the Environmental Science Center at Ft. Meade, Maryland and three state laboratories (Ohio, Michigan, and North Carolina). Results of the tests are then shared with OPP's Antimicrobial Division and Biological and Economic Analyses Division, as well as the Office of Enforcement and Compliance Assurance for appropriate follow-up. Current results suggest that a significant number of products fail efficacy testing. **When requested to sample antimicrobials for testing, states, tribes, and Regions are asked to place a high priority on that work.**

States, tribes, and Regions may choose to expand cooperative agreement work related to antimicrobials beyond the antimicrobial testing program. In addition to the efficacy of antimicrobial products, these products must also be used correctly to prevent efficacy failure and to prevent exposure hazards. States, tribes, and Regions should consider inspections and education targeted to the proper use of antimicrobials used to protect human health.

An example of work that may be a priority for some states and tribes is indoor mold control. Concern about indoor exposure to mold has been increasing as the public becomes aware that exposure to mold can cause a variety of health effects and symptoms. There are opportunities for education on mold prevention (e.g. moisture control – see <http://www.epa.gov/iaq/molds/>) and for compliance (e.g., use of antimicrobials in heating and ventilation ducts – see <http://www.epa.gov/iaq/pubs/airduct.html>; “Should You Have The Air Ducts In Your House Cleaned?”). The air quality program in your Regional Office may be of help in defining a work effort on mold control.

In addition, many products are being advertised as antimicrobials that may not be registered as such. Some of these may also claim to be 25(b) minimum risk pesticides. EPA and its partners should work together in identifying such products and ensuring their compliance, especially those claiming efficacy against public health concerns such as, but not limited to, anthrax, SARS, West Nile Virus, and Foot and Mouth Disease.

b. Disease Vector Control

Control of disease vectors, (e.g., mosquitoes, cockroaches, fleas, rats, mice) present opportunities to improve pesticide product compliance, to improve pesticide use compliance, and to improve education.

Mosquito control related to West Nile Virus (WNV) is becoming a nationwide effort. In

2002 there were 4156 human cases of WNV, including 284 deaths. The virus was detected in 44 states and the District of Columbia. <<http://ace.orst.edu/info/npic/wnv/>> Some states and Regions have sampled mosquito control products and found them to be under-formulated which makes the effectiveness of those products questionable. (See “Malathion ULV Mosquitocide Investigation Strategy” of June 25, 2003.) Many states have conducted use inspections to ensure that mosquito control products are used correctly and have provided educational programs on controlling and repelling mosquitoes. States, tribes, and Regions should evaluate the need for increased compliance and/or education efforts due to WNV concerns.

Some states and tribes may put control of other human disease vectors at a higher priority than those that transmit WNV. Those efforts can also be funded under this priority.

c. e-Commerce involving pesticides used to protect human health

It is becoming increasingly common for pesticides that make public health claims to be advertised on the Internet. For many of these products, it is unclear what their registration status is let alone verification of any efficacy claims. As part of an overall strategy of addressing public health pesticides, targeted searches on the Internet needed to be conducted. In many instances, identified sites can be addressed using a compliance assistance message based on the EPA/AAPCO joint statement. Others, that make claims about significant public health concerns like West Nile Virus or anthrax, may need to be addressed through enforcement action.

d. Measuring outcomes – Reporting

States, tribes, and Regions should try to assess outcome of their work effort under this priority, i.e., the impact on human health. EPA is looking for ways to measure the outcomes of the programs that the Agency funds rather than just outputs such as the number of people trained or the number of violative products found. Any methods used to assess human health impact will be shared with states and tribes nationwide.

If a state finds that a product fails in state-conducted efficacy testing, this information should be forwarded to EPA so that this product can be included in the national Antimicrobial Testing Program as soon as possible.

States and tribes need to provide a report at the end of the year on their work on pesticides used to protect human health. That report must include the results of any product investigations or other action taken. Regions should include that report with their end-of-year review.

3.2 Work Activities to Support the Core Pesticide Compliance and Enforcement Program

Maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. Recognizing the magnitude of maintaining the core program, the need to address pesticide enforcement program priorities,

and the variation in workload across regions and among state programs, states and tribes may need to make adjustments and trade-offs within their core program. States/tribes should work with their EPA Region to ensure that areas with potential high impact receive priority attention during work planning. Areas such as producer establishment inspections, pesticide misuse with significant human health or environmental impacts are examples of potential high impact areas. The grant work plan negotiation process will provide the opportunity to address difficult trade-offs within the core. States and tribes should work cooperatively with their EPA Region to enhance state and tribal compliance monitoring activities. Information and knowledge that regions possess, such as FIFRA Section 7 producer establishment data (that is, the non-confidential Section 7 data such as names and addresses of production establishments, names of pesticides, active ingredients, and devices produced therein, etc.) should be provided to states and tribes to incorporate into their priority setting schemes as well as their routine neutral inspection programs. The state/tribe should indicate in their work plans their commitment to the following core activities:

3.2.1 Primary Core Program Activities

3.2.1.1 Producer Establishment Inspections (PEIs)

Producer establishment inspections should be targeted with the intention of conducting inspections at all producing establishments within their jurisdiction over an extended period of time. Inspections should be on a routine cycle. Emphasis on PEIs focuses resources at the source of the product and therefore, assures product label changes have been incorporated, products are registered, product labels and labeling are in conformance with their registrations, and assures the integrity of the products. Because of the confidentiality of pesticide production data, states and tribes should not be asked to verify the veracity of reported production figures.

This activity may include antimicrobial sampling requests from EPA as part of its overall effort to ensure that these products are registered and efficacious, as well as having the correct product composition and labeling. In addition, PEI's may be requested in response to tips/complaints regarding unregistered products/misbranded products/devices.

3.2.1.2 Dealer/Distributor/Retailer Inspections

Dealer/distributor/retailer inspections will be conducted on a routine basis to ensure product compliance as well as compliance with bulk repackaging/custom blending policies, and requirements for the sale of restricted use pesticides. In addition, potential violations found in advertisements, including e-commerce ads, as well as tips/complaints, may require investigation/enforcement action.

3.2.1.3 e-Commerce

Recently, state pesticide regulators and U.S. EPA have become aware of an increase in advertising, offers for sale, sales, and distribution of pesticide products via the Internet. States,

tribes, and EPA are concerned about several issues relating to e-commerce including the sale of unregistered, misbranded, or restricted use pesticides, and the distribution of labels through Internet sites.

Many states are concerned about the ease with which so-called e-vendors can establish a virtual store on the Internet. In order to assure compliance with FIFRA, these entities (both large and small) need to be made aware of the basic regulatory requirements of FIFRA, as well as the regulatory requirements of the states and tribes. In addition, the legality of sales of a number of types of products such as canceled, restricted use, limited use, emergency exemption products, and inactive products vary depending on many different and changing conditions.

The Association of American Pesticide Control Officials (AAPCO) in cooperation with EPA has developed an outreach/compliance assistance piece intended for widespread distribution to pesticide e-commerce sites. It is intended to provide the e-vendor or the potential e-vendor with the basic requirements for selling or distributing pesticides and pesticide services under state and federal laws.

An additional area of concern are commercial auction sites because they act more as brokers, coordinating sales between private parties, rather than conduct direct sales themselves. Moreover, agricultural use products sold via the Internet potentially could make their way into the urban sector more easily.

The EPA has developed a compliance/enforcement strategy for ensuring that pesticides and pesticide services are marketed in accordance with state and federal laws and regulations. This would help to ensure that pesticides that are distributed and sold in e-commerce are treated the same as pesticides marketed in the more traditional manner.

3.2.1.4 Misuse

States [but not tribes] have primary responsibility under FIFRA for pesticide use violations. Notwithstanding, tribes with pesticide enforcement cooperative agreements with EPA will be accorded the same responsibility to investigate and take enforcement action in instances of pesticide misuse as states do under FIFRA's primacy provisions, if they have tribal laws and regulations governing misuse on tribal lands. Investigations conducted by tribal inspectors using EPA credentials must be turned over to the Regional Office for enforcement action. States should continue to address pesticide misuse, particularly as it relates to WPS, food safety, structural pest control, and drift. Regarding allegations of misuse, states and regions should review their current criteria for section 27 referrals and ensure that they address any allegations of human harm, especially those involving agricultural pesticides and WPS violations. The criteria for section 27 should also address those instances of serious harm to humans or the environment that the state becomes aware of first. Both Regions and states should track tips/complaints received and their disposition. Note: not all referrals made to the states will be tracked as section 27 referrals and the only tracking necessary for referrals that fall outside of the section 27 criteria is that the referral has been made.

3.2.1.5 Pesticides Infrastructure

Cooperative agreement resources should be used to undertake the following activities to support infrastructure needs for the applicant's compliance enforcement program.²

- a. Pesticides Inspector Residential Training: The Office of Compliance's Agriculture Division, in cooperation with state pesticide agencies, generally offer two PIRT courses per year. These courses may include for example: the Pesticides Worker Protection Train-the-Trainer Inspector Training Course; the Pesticide Product Enforcement Course; and the Pesticide Use Enforcement Course. With regard to the training courses, states, and tribes and Regions should incorporate participation in these courses into their work plans.³ States and tribes interested in hosting PIRT courses should notify OECA through their Regional Office of their interest.
- b. Pesticide Regulatory Education Program: The Pesticide Regulatory Education Program (PREP), jointly sponsored by OECA and OPP, is an educational program for senior management, senior scientists, managers and supervisors of field enforcement and compliance assurance programs, and those slated for management positions of state or tribal pesticide regulatory and environmental management programs throughout the U.S. PREP courses are designed to provide practical, up-to-date information on technical, policy, and management related issues. PREP curriculum relies upon the expertise of both private and public sector individuals to offer course participants current perspectives on issues relevant to the regulation of pesticides. As with other training, states and tribes should specifically identify personnel who would most benefit from this training.
 - Other training opportunities: Each Regional Office should work cooperatively with their states and tribes to sponsor yearly training opportunities, particularly for pesticide inspectors. States and tribes should set aside cooperative agreement funds to cover costs associated with this training.
- d. Case Development Training: Regions should encourage state and tribal

² Funds to attend PREP and PIRT training do not need to be factored into state or tribal training needs because these funds are set aside and provided separately to participants in those training opportunities.

³ Additional information on available training opportunities for state and tribal staff can be found on the OECA home page for the National Enforcement Training Institute. Visit the site at "<http://www.epa.gov/compliance/training/neti/index.html>", and click on Course Catalog.

attendance at case development training courses.

- e. Enhanced Database Development: Regions are asked to strengthen pesticides compliance program infrastructure through enhancement of database systems. Regions should work with states and tribes wherever possible on this objective. Enforcement funds may be used to develop or enhance systems for the collection and management of targeting, compliance, or enforcement data, particularly in support of the pesticides field data program.

3.2.1.6 Compliance Assistance

- a. Compliance assistance activities: The state/tribe and region should agree on the compliance assistance activities to be conducted where appropriate. These activities may range from providing outreach materials to improve compliance, for example, in areas where regulatory requirements are new or violations are occurring due to a lack of understanding; to conducting seminars or public meetings with the regulated industry to explain requirements or answer questions; to conducting compliance assistance visits/workshops; to providing remedial training for violators; to developing programs reflecting EPA's policies on self audits, and compliance assistance visits. When new EPA policies are issued, applicants are encouraged to reflect such policies within their programs as warranted.
- b. EPA Agriculture Compliance Assistance Center: The Office of Compliance, OECA, has established the National Agriculture Compliance Assistance Center. The Ag Center helps producers of agricultural commodities and their supporting businesses comply with all environmental requirements, prevent pollution before it occurs, and reduce costs associated with compliance by identifying flexible, common-sense ways to achieve compliance.

The primary purpose of the multi-media, sector-oriented Ag Center is to provide a base for "first stop shopping" for the agriculture sector - a place to provide information on EPA's environmental requirements affecting the agriculture sector, information that is environmentally protective and agriculturally sound. The Ag Center provides information and technical support to state regulatory programs to assist them in meeting the compliance assistance needs of their regulated agricultural communities.

The Ag Center utilizes existing distribution mechanisms, such as USDA-Extension, state pesticide regulatory agencies, crop consultants, etc. The Ag Center is enlisting the active participation of representatives of the agricultural community including USDA, state lead agencies, trade associations and others providing information to the agricultural community. Active participation by

representatives from all members of the agricultural community helps the Ag Center produce the types and kinds of information needed.

States and tribes should include in their compliance programs a commitment to work, through the regions, with the Ag Center to identify information/compliance assistance needs and to help field test materials. States and tribes are encouraged to use the Ag Center's services and to provide feedback to the Ag Center on its services to ensure their needs are being met.⁴

3.2.1.7 Cancellations, Suspensions, Other Major Regulatory Actions, Recalls, and National High Risk Initiatives

Implementation of cancellation or suspension orders, National Compliance Strategies for canceled or suspended pesticide products and other major regulatory actions must be a part of every state enforcement program. States and tribes will conduct inspections and other compliance monitoring activities to assure compliance with major pesticide regulatory actions within the time frames specified in the nationally issued Compliance Monitoring Strategies. Inspections and other compliance monitoring activities for this priority area may address: (a) major cancellation actions; (b) all suspensions under FIFRA Section 6; (c) FIFRA Section 3(c)(2)(B) suspensions; and (d) other major pesticide regulatory actions (i.e., label improvement programs, etc.).

EPA may also require registrants and distributors to recall pesticide products that have been both suspended and canceled. Once these recall requirements are effective, applicants will need to inspect for compliance and enforce where applicable. This applies only to pesticides suspended under Section 6. Once these recall requirements are effective, the applicants and regional offices should discuss the relative priority of the different activities being conducted under their enforcement cooperative agreement and renegotiate work activities as appropriate. Recommended procedures for recalls and disposal are found in 40 C.F.R. part 165. Violations of EPA recalls should be referred to the appropriate EPA Region.

States and tribes may also be requested to participate in National initiatives to address specific risks. OECA will work with regions and states and tribes to develop and implement such initiatives. Because the workload in this area cannot be anticipated in advance, it is understood that states and tribes may renegotiate the outputs in the cooperative agreement upon receipt of requests to conduct activities in the above areas.

⁴ *The Ag Center's toll free telephone number and fax-on-demand number is 1-888-663-2155, and its web site is at <http://www.epa.gov/agriculture>.*

3.2.1.8 Imports and Exports

States and tribes should conduct inspections for imported pesticides on regional request; the specifics of these inspections should be arrived at after consultation and negotiation with the regional office. These may include shipments detained at ports of entry or foreign trade zones, that the region has determined through Notices of Arrival or other information may be in violation of FIFRA.

States and tribes should also continue to conduct pesticide export inspections; the specifics of these inspections should be arrived at after consultation and negotiation with the regional office. These inspections are generally to be included in the routine producer establishment inspection program. Additional guidance will be provided as needed to inform regions, states and tribes of the impacts, if any, of international agreements with foreign governments regarding exports that fall within the Prior Informed Consent or Persistent Organic Pollutants areas. These agreements are expected in the near future.

3.2.1.9 Section 18 Monitoring

Under Section 18, both federal and state agencies may be exempted from any provision under FIFRA by the Administrator if an emergency condition exists. Each cooperative agreement application work plan should reflect how the state/tribe plans to address monitoring and follow-up on Section 18 exemptions to ensure compliance with the terms and conditions of section 18's within the state, especially suspected misuse violations. The number of Section 18 inspections should be negotiated between the region and the state/tribe.

3.2.1.10 Urban Initiative

In the past, the misuse of agricultural pesticides, insecticide chalk, and other pesticides to control roaches and other pests in urban and residential communities nationwide, and problems with unlicensed applicators, has resulted in significant health risks to residents in many parts of the U.S. Information suggests that similar misuse of agricultural pesticides indoors is occurring in other communities nationwide.

The urban pesticide enforcement program will focus on violations associated with illegal sales and misuse of agricultural pesticides in urban areas. Applicants should include a commitment to work with EPA in carrying out the urban pesticide enforcement program. The level of commitment to implementation of this program must be agreed upon between the regional office and each state or tribe in their cooperative agreement.

Funding for urban initiative work has been incorporated into the basic enforcement funding provided to states. States and tribes should negotiate specific work activities as appropriate within the state.

3.3 Other Core Program Activities

3.3.1 Section 19(f) Enforcement Activities

In accordance with FIFRA Section 19, a state may not exercise primary enforcement responsibility under Section 26, or certify applicators under Section 11, unless the Administrator determines that the state is carrying out an adequate enforcement program to ensure compliance with Section 19(f). EPA issued a Policy Statement (58 FR 43,994, Aug. 18, 1993), that provided the criteria that states must undertake in order for the Administrator to make an adequacy determination. To date, the Agency has announced interim determinations of adequacy for all states.

If the Section 19(f)(1) regulations are promulgated during the time frame covered by this Guidance, the Agency will establish criteria for evaluating state programs under FIFRA Section 19(f)(2) to ensure that they in fact do have and continue to have adequate compliance programs for regulations promulgated under Section 19. The criteria and process for this will be published in the Federal Register for public comment after the regulations under Section 19(f)(1) are promulgated. When these regulations are promulgated, regions and states will need to renegotiate work activities.

SECTION 4: REPORTING AND EVALUATION REQUIREMENTS

4.1 Reporting

There are quarterly and year-end (annual) reporting requirements for funded activities and programs. See section 4.2 for state/tribe and Regional Office evaluation requirements.

4.2 Evaluations

The state/tribal cooperative agreement must include an evaluation plan mutually acceptable to EPA and the applicant. At a minimum, the plan should include a schedule for conducting timely end-of-year evaluations, preferably on-site [if the Regional Office's budget allows]. Applicants must report their pesticide program activities and accomplishments conducted under the cooperative agreement in a time frame agreed to by the applicant and the Regional Office. In addition to the evaluation reports that OPP and OECA require [and are a requirement of EPA's grant regulations], Regions may negotiate reporting requirements in addition to those of EPA headquarters.

The basic format for the evaluation reports should include an Executive Summary, an Introduction, Fiscal Review, and Legislative Review. The evaluation reports should also include the following information for the enforcement (inspections, sampling, enforcement

actions) and program (four specific program areas and any additional program activities):

- Narrative summary of the applicant's demonstration of having reached national goals.
- Narrative summary of success of additional program activities funded and description of success based upon the success measures agreed to with the applicant during negotiation for funding these program activities.
- Comparison of scheduled vs. actual accomplishments.
- Tangible outputs completed.
- A discussion of problems and proposed resolutions.
- A discussion of any changes in commitments agreed to between the applicant and the Regional Office and any effect these changes had on the applicant reaching national goals
- A discussion of the probable effect of any failure to meet specific activities.
- A discussion of any legislative or regulatory changes that have the potential to negatively impact the state or tribal pesticide enforcement program, e. g., state audit privilege laws, reduction in state penalty authority.

4.2.1 Mid-year and End-of-Year Evaluation Reports

4.2.1.1 Mid-year Evaluations for Program Cooperative Agreements

OPP no longer requires that mid-year evaluation reports of cooperative agreement activities be submitted. However, the Region may have its own requirements to perform mid-year evaluations. Regardless of OPP's determination that it does not need to obtain a mid-year evaluation report, it views such an evaluation as an opportunity for the Region and the recipient to assess progress and make any mid-year adjustments that may be needed. OPP emphasizes its need to receive end-of-year evaluations in a timely manner as indicated in the following section.

4.2.1.2 End-of-Year Evaluations for Program Cooperative Agreements

The EPA Regional Office will submit an end-of-year evaluation report within 90 days of the close of the State's/Tribe's cooperative agreement fiscal year, to:

*Chief, Government and International Services Branch
Field and External Affairs Division (7506C)
EPA Office of Pesticide Programs
Washington, D.C. 20460.*

4.2.2 Mid-year and End-of-Year Evaluation Reports for Enforcement Cooperative Agreements

OECA is to be provided with timely copies of both mid-year and end-of-year cooperative agreement evaluation reports. If the pesticide enforcement cooperative agreement funding for a state, territory, or tribe has been included in a Performance Partnership Grant (PPG), these same requests for copies of grant documents continue to apply.

The EPA Regional Office will submit evaluation reports within 90 days of the close of the state's/tribe's cooperative agreement fiscal mid-year and end-of-year. Evaluation reports are to be submitted to:

Chief, Agriculture Branch (2225A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

4.2.3 Worker Protection Specific Information

Regions are required to obtain from applicants the information outlined in section 2.2.2 of this guidance and Appendix 5.

4.2.4 Certification Program Specific Information

Regions are required to obtain from applicants the information outlined in section 2.2.2 of this guidance under the heading “Worker Safety Programs - Reporting.” [NOTE: Applicants must ensure they provide the requested C&T information so that they comply with the reporting requirements located in 40 C.F.R. sec. 171.7(d). Please note these numbers only need only be submitted at the end of the year and for the entire year rather than quarterly for each quarter.]

4.2.5 Water Quality Protection Specific Information

States and tribes should report on activities conducted under the cooperative agreement related to water quality. Any work performed under agreement should be reported on in terms of the commitments made, the progress toward completion of the commitment, issues that prevented completion of the commitment, and any environmental or programmatic results from undertaking the commitment. Additionally, if any of the agreement involved monitoring surface or ground water, the monitoring results must should be submitted with the end of year report. Ideally, any monitoring results submitted would be provided in electronic format and forwarded to EPA HQ, Environmental Field Branch with the end of year evaluations conducted by the Regional Office.

4.2.6 Significant Incident Reporting

Applicants are encouraged to report certain serious types of adverse effect incidents that involve pesticides, based on criteria for severity supplied by the Agency. Incidents will include those that involve workers, handlers, the public, and non-target species. A data base is being developed in OPP that would facilitate the reporting of ecological incidents.

SECTION 5: STATE/TRIBAL COOPERATIVE AGREEMENT AUTHORIZATION AND ADMINISTRATIVE REQUIREMENTS

To ensure an orderly administrative review, programmatic evaluation and funding of cooperative agreement applications, the applications should be received by the Regional Grants Management Offices at least 60 days prior to the beginning of the proposed budget period. This is a federal requirement that must be adhered to in accordance with 40 C.F.R. sec. 35.105. Awards and funds will be made and distributed as promptly as possible once Federal Budget figures are finalized.

Each application for FY 2005 - 2007 State/Tribal cooperative agreement funds must include a proposed work plan as discussed earlier in this guidance document and as required by the EPA Regional Office. The applicant and the Regional Offices should work closely together to develop a complementary EPA/Applicant program.

In accordance with 40 C.F.R. sec. 35.113, EPA will not reimburse applicants for costs incurred before the date of award, unless it is a continuation award and the application was submitted by the applicant prior to the expiration of the prior budget period. If applications for continuation awards are not received in a timely manner, it will be necessary to request a formal deviation, approved by the Grants Administration Division, before any pre-award costs may be approved. Most pesticide cooperative agreements are continuing awards, however, any need to request formal deviation may delay award of funds further. If there is any question regarding this area, the Regional Grants Management Office should be contacted for clarification.

In addition to this guidance document, Regional Offices and the applicant should consult the appropriate regulations in 40 C.F.R. Parts 31 and 35, the Administrator's Policy on Performance-Based Assistance, and the Assistance Administration Manual, previously distributed, when preparing, negotiating and evaluating cooperative agreement applications. Applicants can find more information on grants policy, grants competition, regulations, and so forth at http://www.epa.gov/ogd/grants/how_to_apply.htm.

5.1 Authorization for State/Tribal Cooperative Agreements

Section 23(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, authorizes EPA to enter into cooperative agreements with states, territories, and Indian tribes ("applicants") to conduct pesticide enforcement programs and Section 23(a)(2) provides

for certification and training programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for fiscal year 1999, pesticide program implementation grants under section 23(a)(1) of FIFRA are available for “pesticide program development and implementation, including enforcement and compliance activities.” Under FIFRA section 2(aa), the term “state” means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territories of the Pacific Islands and American Samoa.” The term “Indian Tribe/reservations” refers to Federally Recognized Tribes and reservations.

5.2 Performance Partnership Grants (PPGs)

The Agency expects authorization for performance partnership grants (PPGs) to continue in FY 2005 and beyond. Applicants may negotiate a PPG in lieu of both a pesticide program and an enforcement cooperative agreement. Separate guidance exists regarding the application and other requirements for PPGs. Under the PPG system, Regions and applicants should continue to use this Pesticide Program State/Tribal Cooperative Agreement Guidance to ensure that program and enforcement priorities are considered. If a Region and applicant wish to negotiate a PPG that appreciably modifies the levels of attainment in this FIFRA specific guidance, such as a level of attainment for worker protection, then the senior management of that Region should first discuss this shift in priorities with the appropriate National Program Manager.

5.3 Standard Application Forms

The regulations (40 C.F.R. sec. 31.10) require applicants for assistance to use Standard Form 424 (revised 4/88). Application kits including all the necessary application forms may be obtained from the EPA Regional Grants Management Office.

5.4 Budget Requirements

5.4.1 OPP Cost Sharing

Certification Programs: FIFRA, section 23(a)(2), limits EPA's share of the “total project costs” to not more than 50% of the total funding level. [**Note:** For tribal applicants, applying for a PPG the cost share is limited to no more than 10%. (See 40 C.F.R. sections 35.530 - 35.538.)]

Other Field Programs: A 15% match by applicants is recommended. This may include in-kind services.

Additional Program Activities: A 15% match by applicants is recommended. This may include in-kind services.

Pesticide Management Program Maintenance: A 15% match by applicants is

recommended This may include in-kind services.

5.4.2 OECA Cost Sharing

Enforcement Programs: A 15% match by applicants is recommended. This may include in-kind services.

Additional Program Activities: A 15% match by applicants is recommended. This may include in-kind services.

5.5 Itemized Budget Detail

The applicant should include supportive itemized statements or fact sheets to expand upon the expenditures proposed for at least (1) certification; (2) the other specific program areas (worker protection, water quality and endangered species); (3) each additional program activity for which the applicant is requesting funding; (4) enforcement activities; and (5) Pesticide Management Program Maintenance for the cost categories:

- personnel
- travel
- equipment and supplies

Budget details must conform to cooperative agreement/grant requirements. Specific information regarding the level of detail can be obtained from the Regional Grants Management personnel.

States and tribes have the option of applying for a Pesticide Performance Partnership Grant (PPG) which affords the option of combining the enforcement, certification and program budgets into one. States and tribes interested in a PPG should direct their inquiries to their Regional contacts. If a State or tribe has a PPG then the itemized budget detailed in Section 5.3.2 would not be required and the PPG guidance would apply.

5.6 Work Plan Narrative

Each cooperative agreement application must be accompanied by a Work Plan consistent with the requirements in 40 C. F. R. 35.107.

EPA expects that work plan activities may change from year to year as national and local conditions and priorities are updated. Therefore, a new narrative statement for each component must be submitted with the application for review and approval annually.

The work plan is negotiated between the applicant and the Regional Office. If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities,

or core performance measures in the national program guidance associated with the proposed activities, the Regional Office must consult with the appropriate National Program Manager [OPP and/or OECA] before agreeing to the work plan. The work plan must specify:

- work plan components to be funded under the grant;
- estimated work years and the estimated funding amounts for each work plan component;
- work plan commitments for each work plan component and a time frame for their accomplishment;
- a performance evaluation process and reporting schedule in accordance with § 35.115 of this subpart; and
- roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations.

5.7 Accountability Under the State/Tribal Cooperative Agreement

According to 40 C.F.R. sec. 31.20, recipients must expend and account for funds awarded in accordance with state/tribal laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures must be sufficient to: (1) track the expenditure of funds separately for at least the certification program, the other pesticide program areas (worker protection, water quality and endangered species), and for each additional program activity funded; (2) permit preparation of Financial Status Reports required by the regulations; and (3) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Applicants must state in the narrative portion of their application that they will ensure that the activities detailed in 40 C.F.R. sec. 31.20 will be followed.

Applicants must maintain accounting records for funds awarded for each component under each agreement including: receipts, matching contributions, and expenditures in accordance with all applicable EPA regulations and generally accepted accounting principles.

For continuing programs, a proper filing system should be in place to maintain accounting information at the start of the project period. New applicants must submit a description of the accounting filing system with their cooperative agreement application and the system should be evident within three months of the start of the project period.

The recipient's expenditures under the agreement must follow cost categories (i.e., budget line item or program elements) established in the original agreement. Except as provided for under 40 C.F.R. sec. 31.30, recipients and sub-recipients can re-budget within the approved direct cost budget. Certain types of changes require prior approval [see 40 C.F.R. sec. 31.30(c) through 31.30 (f)].

States and tribes have the option of applying for a Pesticide Performance Partnership Grant (PPG) which affords the option of combining the enforcement, certification and program budgets into one. States and tribes interested in a PPG should direct their inquiries to their Regional contacts. PPG applicants do not have to account for actual expenditures for specific program activities at the end of the budget and project period as detailed in Section 4.5 and the PPG guidance would apply.

5.8 Quality Management Plans

All applicants for EPA assistance are required to have a Quality Management Plan (QMP) prepared in accordance with the specifications provided in “EPA Requirements for Quality Management Plans” (QA R-2, EPA 1998). Applicants should also refer to “Quality Management Plan Guidance for Pesticide State Lead Agencies” (OECA Document Control No. EC-G-1999-024), issued June 30, 1999, which is intended to supplement “EPA Requirements for Quality Management Plans.” The supplemental guidance was developed by a joint EPA-State workgroup created in September 1998, and co-chaired by the Office of Compliance and the Office of Pesticide Programs. The deadline for submission was October 1999. The QMP must be reviewed and approved by the EPA Project Officer and the EPA Quality Assurance Manager, as a condition for award of any assistance agreement. Once submitted and approved, the QMP can be referenced in subsequent grant applications. Any changes in state procedures that affect the QMP may require a resubmission of an updated QMP. Additional guidance, “Quality Assurance Project Plan Guidance,” was issued in October 2000 and includes Field Monitoring/Sampling, Analytical Chemistry and Antimicrobial Efficacy Testing. Request for information or questions should be addressed to Jim Roelofs (703/308-2964), Office of Pesticide Programs (7506C), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

5.9 Certification Concerning and Disclosure of “Influencing Activities”

Persons (including state agencies) who request or receive grants or cooperative agreements exceeding \$100,000 shall file with the awarding agency a certification that the person has not used, and will not use, federal funds to influence the award of the grant or cooperative agreement. Such persons shall also file a disclosure form if they used, or have agreed to use, non-federal funds to influence the award of the cooperative agreement. Both the certification and the disclosure form should be in the application kit supplied by EPA. If the documents are not in the kit, the applicant should contact the Regional Grants Management Office of EPA.

5.10 Debarment and Suspension Certification

The applicant must include EPA form 5700-49, the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. This form certifies that the applicant currently is not ineligible for assistance due to a disbarment, suspension, or other infraction.

SECTION 6: APPLICATION REVIEW PROCEDURES

Applications are submitted to the appropriate EPA Regional Office. Regions should review the application to ensure all of the required elements have been addressed. Application review procedures, including OPP and OECA contacts when there are questions, can be found in Appendix 2.

SECTION 7: ALLOTMENT OF STATE/TRIBAL COOPERATIVE AGREEMENT FUNDS

The pesticide enforcement allotment (Federal Insecticide, Fungicide, and Rodenticide Act, section 23(a): is based upon 1) a formula which includes the following factors: the state's population, the number of pesticide-producing establishments and certified private and commercial applicators, and the number of farms and farm acreage and 2) a base amount for each state.

The pesticide applicator certification and training allotment (Federal Insecticide, Fungicide, and Rodenticide Act, section 23(a): is based upon 1) a formula which includes the following factors: the number of farms and the number of private and commercial applicators requiring certification or recertification and 2) a base amount for each state.

Allotments are made annually and distributed to the Regional Offices. Regional Offices make final awards.